

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 809 of 2005
WITH
CIVIL APPLICATION NO.945 of 2005

Mohd.Ibrahim Mohd.Esa Maniar .. Appellant

versus

The Municipal Corpn. of Gr.Bombay .. Respondents

...

Mr.Indu Prakkash with Mr.V.V.Mishra for the
appellant.

Mr.R.A. Malandkar for the respondents

CORAM : B.H. MARLAPALLE, J

DATED : 5th September 2005

P.C.:

1. Heard Mr.Indu Prakash and Mr.Mishra, the
learned counsel for the appellant and Mr.Malandkar,

the learned counsel for the respondent Corporation.

2. By the impugned order dated 5th August 2005, the learned Judge of the City Civil Court was pleased to direct the Notice of Motion to be registered and made returnable on 7th October 2005. However, in the mean while, the prayer for ad-interim injunction was turned down and hence, this appeal.

3. The suit structure admeasures 25' x 70' with the height of 14 feet on the front and 18 feet on the rear side with tin roof situated near J.P. Kapadia Godown, Indira Nagar, Sewree and the plaintiff had sought permanent injunction against the corporation restraining it from demolishing the same without following due process of law.

4. Admittedly, no notice for demolition was issued by the Corporation and prima facie it shows that the Corporation has mainly contended that the business presently being carried in with the suit structure is unauthorised/illegal.

5. Under the circumstances, no fault could be found with the view taken by the trial Court in

declining to consider the prayer for an ad-interim injunction and therefore, this appeal must fail.

6. Appeal is hereby dismissed in limine.

7. The Corporation will file its reply to the Notice of Motion by 7th October 2005 so that it is heard expeditiously and in the mean while, any action of demolition of the suit structure shall be by following the due process of law. Civil Application does not survive.

B.H. MARLAPALLE, J